

LABOR AND WORKFORCE DEVELOPMENT

(a)

DIVISION OF WORKERS' COMPENSATION

Rules of the Division of Workers' Compensation Asbestos Exposure Claims Under N.J.S.A. 34:15-33.3; Certification to the Uninsured Employer's Fund Medical Information in Asbestos Exposure Cases.

Adopted New Rules: N.J.A.C. 12:235-7.8 and 7.9

Proposed: February 7, 2005 at 37 N.J.R. 385(c).

Adopted: April 22, 2005 by Thomas D. Carver, Commissioner,
Department of Labor and Workforce Development.

Filed: April 22, 2005 as R.2005 d.161, without change.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c),
34:15-33.3 and 34:15-64.

Effective Date: May 16, 2005.

Expiration Date: March 9, 2006.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing on the repropoed new rules was held on February 28, 2005, at the Department of Labor and Workforce Development, John Fitch Plaza, Trenton, New Jersey. Frederick S. Cohen, Executive Director, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the repropoed new rule. As a result, the hearing officer recommended that the repropoed new rule be adopted without change. The public hearing record may be reviewed by contacting Frederick S. Cohen, Executive Director, Office of Legal and Regulatory Services, Department of Labor and Workforce Development, PO Box 110, Trenton, New Jersey 08625-0110.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted rules are not subject to any Federal requirements or standards.

Full text of the adoption follows:

12:235-7.8 Asbestos exposure claims under N.J.S.A. 34:15-33.3

(a) After due diligence, as defined in (b) below, an application may be filed with the UEF for compensation for asbestosis or asbestos-induced cancer, including mesothelioma, resulting in injury or death from exposure to asbestos where:

1. The workers' compensation insurance carrier of the employer, the employer, or the principals of the employer where the employee was last exposed cannot be located or the employee worked for more than one employer during the time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the employee was last exposed cannot reasonably be identified;

2. The claim petition was pending on or filed after January 14, 2004, and had not been concluded or dismissed prior to that date; and

3. Compensation is based on the last date of exposure if known, or if such date cannot be known, on an appropriate date established by the judge of workers' compensation, pursuant to N.J.S.A. 34:15-33.3(d).

(b) "Due diligence" shall be defined as a reasonable effort on the part of the petitioner or the petitioner's attorney, given the particular facts and circumstances of the case, to determine the identities of the carrier of the employer, the employer, and/or the principals of the employer where the employee was last exposed to asbestos, as well as the identities of any other carriers, employers, and/or principals of other employers that may be liable for benefits. Such efforts shall be listed in the certification required under N.J.A.C. 12:235-7.9 and shall include, unless explained under N.J.A.C. 12:235-7.9(b), the following:

1. Inquiries made to the Compensation Rating and Inspection Bureau to ascertain the workers' compensation insurance coverage of such employers;

2. Acquisition and review of the employee's Social Security earnings history for the period or periods during which the employee was exposed to asbestos;

3. Review of the employee's Federal and State income tax returns for the period or periods during which the employee was exposed to asbestos;

4. Acquisition and review of labor union records and/or pension plan records maintained for the employee for the period or periods during which the employee was exposed to asbestos;

5. Review of the employee's medical records during and subsequent to the period during which the employee was exposed to asbestos;

6. Review of any personal records maintained by the employee with respect to employment for the period or periods during which the employee was exposed to asbestos; and

7. Any other efforts by the petitioner or the petitioner's attorney to establish due diligence.

(c) The UEF may without motion take the deposition of a petitioner and/or other individuals that may have information relevant to the application.

(d) In (a) above, the UEF shall have subrogation and lien rights including those provided by N.J.S.A. 34:15-33.3(b) and (c).

12:235-7.9 Certification to the UEF, medical information in asbestos exposure cases

(a) In addition to the items specified at N.J.A.C. 12:235-7.4 for certification to the UEF, the petitioner shall, in asbestos exposure claims under N.J.A.C. 12:235-7.8, provide the following as part of such certification:

1. Identification of all third-party actions or latent disease claims filed by or on behalf of the employee based upon exposure(s) to asbestos, including the names of the defendants and the courts in which such actions are pending or were concluded;

2. Date of manifestation of the employee's asbestosis or asbestos-induced cancer;

3. Date of discovery, disclosure or diagnosis of the employee's asbestosis or asbestos-induced cancer and its relation to the ability of the employee to work;

4. Rate of progression of the employee's asbestosis or asbestos-induced cancer;

5. Date(s) the employee was impaired or unable to work as a result of the asbestosis or asbestos-induced cancer;

6. Date(s) of any lost time for medical treatments related to asbestosis or asbestos-induced cancer;

7. Nature of pre-existing pulmonary conditions, cancer-related conditions, exposure to any other chemicals, and/or smoking history;

8. Medical basis for concluding that there is a causal relationship between the employee's work and the employee's asbestosis or asbestos-induced cancer;

9. Medical conditions pre-existing the alleged exposure(s) to asbestos, including the nature of the pre-existing condition(s), the date(s) and type(s) or medical treatment received, and the names and addresses of all medical practitioners and providers involved in the diagnosis and treatment of such condition(s);

10. Details of efforts made under the provisions of N.J.A.C. 12:235-7.8(b);

11. Dates and nature of employment during which the employee was exposed to asbestos or during which the employee was exposed to conditions which aggravated or contributed to the asbestosis or asbestos-induced cancer. Such information should include, but not be limited to, any environmental information and data giving evidence of the level of exposure to asbestos and how such levels exceeded those encountered in the general environment; and

12. Nature and extent of any future treatment for the employee's asbestosis or asbestos-induced cancer.

(b) If any of these items of information are not provided to the UEF, the petitioner or the petitioner's attorney shall indicate that a request or search has established that such item or information is not available. The UEF may require such additional information and searches that are necessary and reasonable for review of the application.

(c) In addition to the information required under the provisions of this rule in (a) above and under N.J.A.C. 12:235-7.4, the petitioner shall provide the UEF with all medical records and information related to the asbestos exposure claim.

COMMERCE, ECONOMIC GROWTH AND TOURISM

(a)

NEW JERSEY COMMERCE, ECONOMIC GROWTH AND TOURISM COMMISSION

Grants; Commission Assistance; Urban Enterprise Zones

Adopted Repeal and New Rules: N.J.A.C. 12A:2

Adopted New Rules: N.J.A.C. 12A:2A and 12A:121-3

Proposed: January 18, 2004 at 37 N.J.R. 237(a).

Adopted: April 8, 2005 by Virginia S. Bauer, Chief Executive Officer and Secretary, New Jersey Commerce, Economic Growth and Tourism Commission.

Filed: April 8, 2005 as R.2005 d.143, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2004, c.65, §§1-17 and 19-23.

Effective Date: May 16, 2005.

Expiration Dates: May 16, 2010, N.J.A.C. 12A:2 and 12A:2A;
April 1, 2009, N.J.A.C. 12A:121.

Summary of Public Comments and Agency Responses:

The following is a summary of the comment received from the public and the Agency's response. The comment was submitted by Stacy P. Roth, Esq., Counselor, The Pinelands Commission.

COMMENT: The Pinelands Commission expressed a concern that because the BRRAG Program tax credit eligibility criteria (N.J.A.C. 12A:2-1.3) and application submission requirements (N.J.A.C. 12A:2-1.6(a)vi reference the State Development and Redevelopment Plan (the "State Plan"), but the State Plan does not apply to lands under the jurisdiction of the Pinelands Commission, businesses relocating to designated growth areas within the Pinelands may perceive that they are not eligible for the tax credits. The commenter seeks to amend the term "designated urban center" and the reference to the State Plan in the application submission requirements to make reference to designated growth areas within the Pinelands.

RESPONSE: While the Agency does not agree to amend a definition, "designated urban center," that tracks the express language of P.L. 2004, c.65, the Agency agrees to insert language in the application of submission requirements that clarifies that a business may relocate to a site outside the jurisdiction of the State Plan so long as it provides evidence of approval under the applicable comprehensive management plan. In the case of a business relocating to the Pinelands, this would be a designated growth area under the Pinelands Comprehensive Management Plan. Furthermore, insertion of this language in the application submission requirements for the rules governing the sales tax exemption project is consistent with the flexibility on a project site provided at N.J.A.C. 12A:2A-2.3(c)2. Thus, at N.J.A.C. 12A:2-1.6(a) and 12A:2A-2.5(a)2vi, language is added to address businesses relocating to sites not under the jurisdiction of the State Plan, but rather, pursuant to an approval under the applicable comprehensive management plan.

Summary of Agency-Initiated Changes:

1. At N.J.A.C. 12A:2-1.3(b)1 and 2, language is added to clarify that eligibility for a grant of tax credits arises not only from the type of facility, but also from the retention of full-time jobs housed in that facility.

2. At N.J.A.C. 12A:2-1.7(b) and 12A:2A-2.6(b), language is added reinforcing that the Board of Directors provides a recommendation to the Secretary before the Secretary makes a determination on the application.

3. At N.J.A.C. 12A:2-1.7(f), the process of notifying the Director of the Division of Taxation in the BRRAG tax credit program is conformed to that of the sales tax exemption program, because the terms and conditions of the project agreement set forth the amount of the credit, and must be provided to the Director.

4. At N.J.A.C. 12A:2-1.12(d) and 12A:2A-2.8(d), the citation has been corrected to refer to the prevailing wage statute applicable to the Commission.

5. At N.J.A.C. 12A:2-2.2, the last sentence of the definition of "new business location" has been deleted, since it inadvertently repeated language applicable only to the BRRAG tax credit program in the sales tax exemption program.

6. At N.J.A.C. 12A:2A-2.3(a)3ii and 3iii(4), there is a clarification that the full-time employees have jobs that are retained full-time jobs, to reinforce the point that program eligibility turns on the retention of full-time jobs. There are also grammatical changes at N.J.A.C. 12A:2A-2.3(a)3iii(4) to insert the missing word "be" and replace a comma with a semicolon for parallelism.

7. At N.J.A.C. 12A:2A-2.7(b), the term "approval" has been added to the reference to the agreement to conform to the defined term of "project approval agreement" for this program, and the language "an important inducement" replaces "a material factor" for consistency with the terminology used for this program at N.J.A.C. 12A:2A-2.5(a)1xi.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 2 GRANT PROGRAMS

SUBCHAPTER 1. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

12A:2-1.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the "Commission") to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 §§1 through 16 (the "Act"). The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program ("BRRAG Program" or "Program"), a tax credit certificate transfer program, a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The BRRAG Program is hereby established as a Program under the jurisdiction of the Commission and shall be administered by the Chief Executive Officer and Secretary of the Commission. The purpose of the Program is to encourage economic development and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the Program is available, the Program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed the limitations set forth in this subchapter and further specified in the project agreement of an applicant for a grant of tax credits.

12A:2-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.